



1 ruled, the sentence was excessive, or the sentence is otherwise  
2 subject to some other "collateral attack." 28 U.S.C. § 2255(a). If  
3 the files and records of the case "conclusively show" that the  
4 movant is not entitled to relief, then the court may dismiss the  
5 motion and need not hold an evidentiary hearing. 28 U.S.C.  
6 § 2255(b); *United States v. Medina-Villagrana*, No. 12-cr-0558-JM,  
7 2012 WL4471259, at \*1, (S.D. Cal. Sept. 25, 2012) (citing *United*  
8 *States v. Quan*, 789 F.2d 711, 715 (9th Cir. 1986)).

9 Defendant asserts 1) he is entitled to a reduction pursuant to  
10 the Bureau of Prisons' sentence reduction program, and 2) his  
11 constitutional right to equal protection under the Fourteenth  
12 Amendment and due process under the Fifth Amendment has been  
13 violated. Defendant contends that because he is not a U.S. citizen,  
14 he does not have the opportunity for a one year sentence reduction  
15 through a drug program and three month confinement at a halfway  
16 house, or a Unicor Job with good wages and other benefits, even  
17 though both aliens and citizens alike are subject to the same  
18 rules, policies, and standards of the institution where they are  
19 incarcerated. #26 at 2.

20 The Ninth Circuit has held that "motions to contest the  
21 validity of the sentence must be filed under § 2255 in the  
22 sentencing court." *Hernandez v. Campbell*, 204 F.3d 861, 864 (9th  
23 Cir. 2000) (citing *Doganieri v. United States*, 914 F.2d 165, 169-70  
24 (9th Cir. 1990); *Brown v. United States*, 619 F.2d 672, 677 (9th  
25 Cir. 1980)). Conversely, "petitions that challenge the manner,  
26 location, or *conditions* of a sentence's execution must be brought  
27 pursuant to § 2241 in the custodial court." *Id.* (emphasis added).  
28 Here, the custodial court is the United States District Court for

1 the Eastern District of California because the defendant is  
2 confined in the Bureau of Prisons facility in Atwater, California.

3 While defendant filed this motion pursuant to 28 U.S.C.  
4 § 2255, his pleadings show he is not challenging the validity of  
5 his sentence, but rather the Bureau of Prisons' policies where he  
6 is incarcerated. Such a challenge falls under a "manner" or  
7 "condition" of his sentence, and is therefore appropriate pursuant  
8 to 28 U.S.C. § 2241, rather than 28 U.S.C. § 2255. To the extent  
9 the defendant is challenging the policy of the Bureau of Prisons,  
10 rather than his sentence, the action must be filed under § 2241 in  
11 the custodial court. *Id.*

12 To the extent the defendant is challenging the validity of his  
13 sentence, 28 U.S.C. § 2255 is subject to a one year statute of  
14 limitations. 28 U.S.C. § 2255(f).<sup>1</sup> This limitation requires the  
15 requesting party to bring the motion within one year of the date  
16 "on which the judgement of conviction becomes final." 28 U.S.C.  
17 § 2255(f)(1). After final judgment, the defendant has 14 days to  
18 appeal his conviction. Fed. R. App. P. 4(b)(1)(A)(I). However, a  
19 defendant can bring an ineffective assistance of counsel claim  
20 under § 2255 even if he does not raise that issue in the appeal.  
21 *Massaro v. United States*, 583 U.S. 500, 504 (2003).

22 Even if the motion is untimely, the one-year statute of  
23 limitations on § 2255 is subject to equitable tolling, which  
24 applies when "extraordinary circumstances beyond [the movant's]  
25 control made it impossible to file a petition on time and the

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27 <sup>1</sup> Of note, if defendant had filed the appropriate habeas petition  
28 under 28 U.S.C. 2241, it would still be untimely, as that statute also  
has a one-year statute of limitations. See 28 U.S.C. 2244(d)(1)  
(2015).

1 extraordinary circumstances were the cause of his untimeliness."  
2 *United States v. Battles*, 362 F.3d 1195, 1197 (9th Cir. 2004)  
3 (quoting *Laws v. Lamarque* 351 F.3d 919, 922 (9th Cir. 2003)). If  
4 the defendant can prove that he has diligently pursued his rights  
5 and extraordinary circumstances exist, the court may toll the one-  
6 year limitation. *United States v. Aguirre-Ganceda*, 592 F.3d 1043,  
7 1045 (9th Cir. 2010).

8 Here, defendant was sentenced on November 13, 2013, and  
9 judgment was entered on November 15, 2013. Defendant did not appeal  
10 his conviction. Defendant filed his motion for reduction under  
11 § 2255 on April 20, 2015, which is one year and five months after  
12 the entry of judgment. Therefore, under § 2255's one-year statute  
13 of limitations, the defendant's motion is untimely.

14 The defendant has failed to make a showing that he diligently  
15 pursued his rights or that extraordinary circumstances exist that  
16 would justify the tolling of the one year limitation period.

17 Accordingly, based on the foregoing, defendant Mario Martinez-  
18 Manzo's motion to vacate under 28 U.S.C. § 2255 (#26) is DENIED.

19 IT IS SO ORDERED.

20 DATED: This 18th day of August, 2015.

21   
22 UNITED STATES DISTRICT JUDGE